# Public Prosecutor v Dato' Seri Anwar Ibrahim

HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NO 44–18 OF 1999
HASHIM YUSOFF J
1 MARCH 2002

***Criminal Procedure*** *— Contempt of court — Committing High Court judge for contempt — Objection to Attorney General's application to represent High Court judge in proceedings — Whether Attorney General had locus standi to act on behalf of alleged contemnor — Whether High Court judge should appear in person or get a counsel from private practice*

Counsel had filed a motion to commit a High Court judge ('the judge') for contempt. The Attorney General's ('the A-G') application to represent the judge in the proceedings were objected to based on the following grounds: (i) that the A-G had no locus standi to act on behalf of the alleged contemnor; and (ii) that the judge should appear in person or get a counsel from private practice. Counsel submitted that such representation would be in conflict with the doctrine of separation of powers and that the A-G had no automatic right of audience since the A-G had only the right to represent a public officer in civil proceedings and the contempt proceedings were not civil in nature, also that the judge had compromised the judiciary by accepting the services of the A-G. The A-G, inter alia, submitted that it was his duty to stop any attempt to bring any contempt proceedings which did not disclose any prima facie contempt and the A-G was appearing in order to protect the institution of the judiciary.

**Held**, dismissing the objection raised by counsel and allowing the application for the A-G or his representative to appear as counsel for the judge:

(1) Any application to cite a judge of the High Court for contempt would certainly be a matter of public interest and particularly so in the legal fraternity. It was not disputed that 'public services' under art 132 of the Constitution did not include the office of the High Court judge. However, from the nature and method of appointment of and the provision for a High Court judge's remuneration, the judge had exercised his powers as a High Court judge under the Constitution and the Courts of Judicature Act 1964. The words being the subject matter of the instant notice of motion were uttered by the judge in the course of his duties as a judge of the High Court. Whether the words were contemptuous and if so, whether the judge could be cited for contempt in his own court were issues to be determined later in these proceedings (see pp 734E, H–735A).

(2) The court could not agree with the argument that the A-G could not represent the judge in these contempt proceedings. It could not be said that the judge had compromised the judiciary by

accepting the services of the A-G to appear and defend him in these proceedings (see p 735A–B).

(3) It would be appropriate and proper for the A-G, as the officer established under the Constitution, and under the Government Proceedings Act 1956 to step in and defend the judge not as a private individual but in the protection of such office and the institution of the judiciary and in the interest of the administration of justice as the alleged contemptuous words were said in the course of his work and it would not affect the doctrine of separation of powers (see p 735C–D).

(4) The A-G was intervening for a purpose. It had either to be in support or in opposition to the motion. It was obvious from the A-G's application that he was opposing the motion and asking this court to dismiss the notice of motion. The court did not see any reason why the A-G could not act as counsel for the judge (see pp 735I–736B).

[**Bahasa Malaysia summary**

Peguam telah memfailkan satu usul untuk mendakwa seorang hakim Mahkamah Tinggi ('hakim tersebut') untuk penghinaan mahkamah. Permohonan Peguam Negara ('PN') untuk mewakili hakim tersebut dalam prosiding telah dibantah atas sebab-sebab berikut: (i) bahawa PN tidak mempunyai locus standi untuk bertindak bagi pihak penghina mahkamah yang dikatakan; dan (ii) bahawa hakim tersebut patut mewakili diri beliau sendiri atau mendapat perkhidmatan seorang peguam yang mengamal secara persendirian. Peguam telah berhujah bahawa perwakilan tersebut akan bercanggah dengan doktrin perasingan kuasa dan bahawa PN tidak mempunyai hak kehadiran yang automatik memandangkan PN hanya boleh mewakili seorang pegawai awam dalam prosiding sivil dan prosiding penghinaan mahkamah bukan bersifat sivil, dan lagipun hakim tersebut telah mengkompromi badan kehakiman dengan menerima perkhidmatan PN. PN, inter alia, berhujah bahawa adalah kewajipan beliau untuk menghalang sebarang prosiding penghinaan mahkamah yang tidak mendedahkan sebarang penghinaan mahkamah prima facie dan PN hadir untuk melindungi institusi badan kehakiman.

**Diputuskan**, menolak bantahan yang dibangkit oleh peguam dan membenarkan permohonan PN atau wakil beliau hadir sebagai peguam bagi pihak hakim:

(1) Sebarang permohonan untuk mendakwa seorang hakim Mahkamah Tinggi untuk penghinaan mahkamah adalah satu perkara kepentingan awam, lebih-lebih lagi di dalam bidang perundangan. Ia tidak dipertikaikan bahawa 'public services' di bawah perkara 132 Perlembagaan Persekutuan ('Perlembagaan tersebut') tidak termasuk jawatan seorang hakim Mahkamah

Tinggi. Walau bagaimanapun, memandangkan daripada sifat dan cara perlantikan dan peruntukan untuk saraan hakim Mahkamah Tinggi, hakim telah menggunakan kuasa beliau sebagai seorang hakim Mahkamah Tinggi di bawah Perlembagaan dan Akta Mahkamah Kehakiman 1964. Perkataan-perkataan yang menjadi perkara pokok notis usul ini telah disebut oleh hakim tersebut semasa menjalankan tugas beliau sebagai seorang hakim Mahkamah Tinggi. Sama ada perkataan-perkataan tersebut menghina mahkamah dan jika sedemikian, sama ada hakim tersebut boleh didakwa menghina mahkamah di dalam mahkamah beliau sendiri merupakan isu-isu yang akan ditentukan kemudian di dalam prosiding ini (lihat ms 734E, H–735A).

(2) Mahkamah ini tidak dapat bersetuju dengan pernyataan bahawa PN tidak boleh mewakili hakim tersebut di dalam prosiding penghinaan mahkamah ini. Tidak boleh dikatakan bahawa hakim tersebut telah mengkompromi badan kehakiman dengan menerima perkhidmatan PN untuk hadir dan membela beliau di dalam prosiding ini (lihat ms 735A–B).

(3) Adalah sesuai dan betul bagi PN, sebagai pegawai yang diwujudkan oleh Perlembagaan dan di bawah Akta Prosiding Kerajaan 1956 untuk mencampur tangan dan membela hakim tersebut bukan sebagai seorang individu, tetapi untuk membela jawatan tersebut dan institusi badan kehakiman dan demi kepentingan pentadbiran keadilan memandangkan perkataan-perkataan yang dikatakan menghina mahkamah telah dikatakan semasa menjalankan tigas beliau dan ini tidak menjejaskan doktrin perasingan kuasa (lihat ms 735C–D).

(4) PN mencelah untuk sebab tertentu, sama ada untuk menyokong atau membangkang usul tersebut. Ia jelas daripada permohonan PN bahawa beliau membangkang usul tersebut dan memohon kepada mahkamah ini supaya menolak notis usul tersebut. Mahkamah ini tidak dapat memberi alasan kenapa PN tidak boleh bertindak sebagai peguam hakim tersebut (lihat ms 735I–736B).]

## Notes

For cases on contempt of court, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1279–1311.

## Cases referred to

*Attorney General v Times Newspapers Ltd* [1974] AC 273 (refd)
*PP v Dato' Seri Anwar Ibrahim* [1998] 4 MLJ 481 (refd)

## Legislation referred to

Courts of Judicature Act 1964 s 13
Emergency (Essential Powers) Ordinance 1970

Federal Constitution arts 97, 122(B), 125(6), 126, 127(B), 132, 145,(e)
Government Proceedings Act 1956 s 24(2)

*Karpal Singh* (*SN Nair*, *Gobind Singh Deo* and *Ramkarpal Singh* with him) (*Karpal Singh & Co*) for applicant.

*Abdul Aziz Abdul Rahim* (*Tun Abdul Majid Tun Hamzah* and *Syed Marzidy Syed Marzuki* with him) for the Public Prosecutor.

**Hashim Yusoff J**: At the hearing of the notice of motion by Mr Christopher Fernando filed on 3 October 2001, to commit Augustine Paul J for contempt in the High Court at Kuala Lumpur, counsel for Mr Christopher Fernando on 18 January 2002, objected to the Attorney General's ('A-G') application by notice of motion filed on 14 January 2002, to represent Augustine Paul J, in these proceedings on the following grounds:

(1) that the A-G has no locus standi to act on behalf of the alleged contemnor;

(2) that Augustine Paul J should appear in person or get a counsel from the private practice.

Mr Karpal Singh on behalf of Mr Christopher Fernando, submitted that if the judge is represented by the A-G, it would be in conflict with the doctrine of separation of powers since the A-G is the legal adviser to the Government under art 145(e) of the Federal Constitution ('the Constitution').

It was further submitted that the A-G can only represent someone who is a 'public officer' which definition under art 132 of the Constitution does not include members or judges of the judiciary. Therefore, counsel submitted, Augustine Paul J, should get his own private counsel.

Reference was also made to the 1988 Constitutional Crisis in the removal of the then Lord President, Tun Salleh Abbas whereby a Tribunal was set up under art 125 of the Constitution and wherein Tun Salleh Abbas was not given any assistance by the A-G then.

Further, submission was put forth by Mr Gobind Singh Deo on behalf of Christopher Fernando that the A-G has no automatic right of audience since it is not provided for under art 145 of the Constitution. It was also submitted that apart from art 145 of the Constitution, only s 24(2) of the Government Proceedings Act 1956 ('the Act') confers the A-G the right to represent a public officer in civil proceedings and since contempt proceedings are not civil in nature therefore the A-G should have no right to represent Augustine Paul J.

Mr Christopher Fernando also submitted that by accepting the services of the A-G, justice Augustine Paul J has compromised the judiciary by being beholden to the A-G. He even went to the extent of saying that Augustine Paul J may even have committed a corrupt practice under the Emergency (Essential Powers) Ordinance 1970 by using his public office for his pecuniary or other advantages.

In his reply, Senior Federal Counsel, Dato' Abdul Aziz bin Rahim on behalf of the A-G, submitted that the only statutory powers regarding contempt are found in art 126 of the Constitution and s 13 of the Courts of Judicature Act 1964 ('CJA'). However, the right of the A-G to appear in contempt proceedings are provided under the common law.

Reference was made to the case of *Attorney General v Times Newspapers Ltd* [1974] AC 273 where Lord Reid at p 273G said:

> It is therefore up to the Attorney General to decide whether it is in the public interest that the Attorney General should act. It is not to protect the private rights of parties but rather to prevent interference with the administration of justice.

Dato' Abdul Aziz then submitted that if the A-G can bring contempt proceedings in order to protect the system of justice, therefore it is also the duty of the A-G to stop any attempt to bring any contempt proceedings which does not disclose any prima facie contempt.

Further, it was submitted that the A-G is not returning any favour to Augustine Paul J. The A-G is merely appearing in order to protect the institution of the judiciary since a judge of the High Court is appointed by the Yang di-Pertuan Agong under art 127(B) of the Constitution and therefore it follows that any attack on that high office will be the duty of the A-G to defend it.

Without doubt any application to cite a judge of the High Court in this country for contempt will certainly be a matter of public interest and particularly so in the legal fraternity.

It is not disputed that the 'public services' under art 132 of the Constitution does not include the office of the High Court Judge as such. So what is the office of the High Court judge? I posed this question to Mr Gobind Singh Deo, and he himself admitted he was not sure and therefore, could not reply.

As submitted by Dato' Abdul Aziz, the High Court judge is appointed by the Yang di-Pertuan Agong on the advice of the prime minister and after consultation with the conference of rulers under art 122(B) of the Constitution. Further, under art 125(6) of the Constitution, Parliament shall by law make provision for the remuneration of judges of the Federal Court which shall be accountable to the consolidated fund. By virtue of para (9) of the same article, the same provision applies to judges of the High Court. Article 97 of the Constitution provides that all monies and revenues received by the federation shall be paid into and form a consolidated fund, which is called the 'consolidated fund'.

It is clear from the nature and method of appointment of and the provision for his remuneration that Augustine Paul J exercises his powers as a High Court judge under the Constitution and the CJA. The words being the subject matter of the instant notice of motion were uttered by Augustine Paul J in the course of the proceedings of Wilayah Persekutuan Criminal Trial No 45–49–98 (*PP v Dato' Seri Anwar Ibrahim* [1998] 4 MLJ 481). It is therefore, done in the course of his duties as a judge of the High Court.

Whether the words are contemptuous and if so, then whether Augustine Paul J can be cited for contempt in his own court are issues to be determined later in these proceedings. For the immediate matter at hand, I cannot agree with the argument that the A-G cannot represent Augustine Paul J in these contempt proceedings. It cannot be said that Augustine Paul J has compromised the judiciary by accepting the services of the A-G to appear and defend him in these proceedings. It was suggested by counsel for Mr Christopher Fernando that the judge should get his own counsel from the private practice. If that were to happen will not Augustine Paul J then be beholden to a member of the Bar? Would he then have not compromised his position with a member of the Bar? Since, as I stated earlier, the alleged contemptuous words were said in the course of his work, which office is established under the Constitution, therefore it would be appropriate, and in fact if I may add, proper for the A-G as the officer established under the Constitution and under the Act to step in and defend the judge not as a private individual but in the protection of such office and the institution of the judiciary and in the interest of the administration of justice in this country. I cannot see how it would affect the doctrine of separation of powers by the A-G doing so. The A-G has exercised his discretion and acted in the public interest by his application to represent Augustine Paul J in order to prevent interference with the administration of justice.

The tribunal proceedings resulting in the removal of the former Lord President Tun Salleh Abbas cannot be equated with the present contempt proceedings as the facts are different. In the tribunal, the A-G was already acting for the prosecution. So how could he be acting for the defence?

I need to add that at the end of his submission, however, Mr Karpal Singh admitted that he did not really object to the A-G intervening and to be heard but that his objection was for the A-G to defend Augustine Paul J. With respect, as I said earlier, the A-G's application to represent Augustine Paul J in these proceedings is not to defend him as a private individual, but rather to defend the office which Augustine Paul J holds. I cannot but say that in these proceedings the position of Augustine Paul J and that of the High Court Judge is one and the same. It is not a case of Augustine Paul J committing any known offence as distinctly defined by the Penal Code or any other statutory provisions. Here, it is alleged that Augustine Paul J committed contempt which is still to be determined. Rather, more importantly is the issue whether a High Court judge can be committed for contempt in his own court in the first place. Since the learned A-G feels as submitted by Dato' Abdul Aziz, that no prima facie contempt has been established by the words uttered by Augustine Paul J in the course of the criminal trial before him, then I could see no reason why the A-G cannot step in to defend the office of the High Court judge and prevent interference with the system of justice in this country.

As stated by Mr Karpal Singh about the Bar holding a watching brief — it is for a purpose, that is either to support or object to the motion. Likewise, in the A-G's case, I should say that the A-G is intervening for a purpose too. It has either to be in support or in opposition to the motion. It is obvious from the A-G's application that he is opposing the motion and asking this court to dismiss Mr Christopher Fernando's notice of motion. So I do not see any reason why the A-G cannot act as counsel for Augustine Paul J. A

For the above reasons, I would dismiss the objection raised by counsel for Mr Christopher Fernando and accordingly allow prayer 1 of the A-G's application for the A-G or his representative to appear as counsel for Augustine Paul J. B

*Objection raised by counsel dismissed and application for the A-G or his representative to appear as counsel for the judge allowed.*

Reported by Chew Phye Ken C

End of Volume 2

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